S.B.Civil Writ Petition No.3302/2007

Sona Ram and others.

vs.

B.O.R., Raj. Ajmer and others.

Date : 6.7.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.CR Jakhar, for the petitioners
Mr.V Goyal, for the respondents no.3 to 5.

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At the request of learned counsel for the parties, this writ petition is heard and decided finally.

The facts in brief are that the plaintiffs/ petitioners filed suit for declaration of their khatedari rights under Sections 88 and 188 of the Rajasthan Tenancy Act before the Court of Assistant Collector, Jodhpur. In the suit, the plaintiffs submitted an application for grant of temporary injunction against the private respondents who alleged that they are khatedar tenants of the land in dispute. The trial court vide order dated 30.9.2005 allowed the injunction application of the petitioners. An appeal was preferred by the defendants/respondents before the

Revenue Appellate Authority, Jodhpur. Said appeal was dismissed by the learned Revenue Appellate Authority, Jodhpur vide order dated 6.9.2006. The respondents/ defendants preferred revision petition to challenge both the orders passed by the two courts below by which the respondents were restrained from dispossessing the petitioners from the land in question. The Board of Revenue at admission stage itself on 20.11.2006 passed the interim order under Section 212(2) of the Tenancy Act read with Section 151 CPC and directed the petitioners/plaintiffs to deposit the cash security at the rate of Rs.300/- per bigha per year before the Tehsildar concerned in cash then only the petitioners can continue to possess the land. The Board of Revenue further ordered that in case, the cash security is not deposited, the Tehsildar concerned shall take possession of the property in dispute. The said order was confirmed by the Board of Revenue after hearing the petitioners vide order dated 7.5.2007. The Board of Revenue was of the view that as the legal remedy may take very long period, it is not proper to let the khatedars to suffer the agony of watching illegal possessions of others on their own land. The Board of Revenue further observed that, “In case possession by others over the khatedari land is tolerated or ignored by courts without any safeguards, then it is like throwing a thirst person in a dreary desert of

desperation without any oasis in sight." The learned Board of Revenue while confirming the order of cash security and in alternative of taking possession from the petitioners, enhanced the cash security amount from Rs.300/- to Rs.500/- per bigha per year.

Learned counsel for the private respondents vehemently submitted that the writ petition of the petitioners is not maintainable in view of the fact that the order under challenge is an interim order passed by the Board of Revenue asking for cash security and in the alternative, appointing the receiver. Learned counsel for the respondent relied upon the judgment of this Court delivered in the case of Bajranglal vs. Board of Revenue and others reported in 2000 RRD 300. Learned counsel for the respondents further submits that the respondents are recorded khatedar tenants. The petitioners encroached upon the land of the respondent in the year 2005 only and thereby they deprived the respondents from possession of the property and they are getting fruits and benefits of the land. In the facts and circumstances, the Board of Revenue after assessing the merits of the case passed the interim order and this is a fact that the Board may take sufficient long time in deciding the revision petition though arising out from the proceedings initiated for interim relief, therefore,

the Board of Revenue was right in holding that the khatedar cannot be left dry.

I considered the submissions of learned counsel for the parties and considered the judgment of this Court delivered in the case of Bajrang Lal (supra) as well as the facts of the case.

In Bajrang Lal's case, contrary to facts of the case, prima-facie case was found in favour of the contesting respondents and, therefore, the Board of Revenue directed the petitioners to deposit cash security during the pendency of the suit. In that fact situation, this Court observed that the Board of Revenue had jurisdiction to pass order of demanding cash security and in fact, it was observed that even if there is some illegality in the order passed by the Board of Revenue which is of interim nature, then no relief can be granted to the aggrieved party under Article 226 of the Constitution of India. The judgment relied upon by learned counsel for the respondents has no application to the facts of the present case because of the plain and simple reason that here in this case, two courts specifically found all the ingredients of grant of injunction in favour of the petitioners/ plaintiffs. The respondents challenged the orders of two courts by preferring revision before the Board of

Revenue, therefore, it is not a case where the order was in favour of the respondents/defendants. In that situation and particularly, when admittedly, the petitioners were found in possession of the suit property and order of injunction was in favour of the petitioners, then the Board of Revenue's observation in its impugned order dated 7.5.2007 that “it is not proper to let the khatedars suffer agony of watching illegal possession on their own land” was uncalled for at that point of time when the Board of Revenue passed the impugned order. It appears that the Board of Revenue proceeded on some presumption only without deciding the merits of the claim of the petitioners and ignored the findings of two courts below. If the Board of Revenue will feel persuaded by its observations that the respondents are khatedar tenants of the land in dispute, then by that the Board of Revenue will be ignoring the fact that without determination of the claim of the petitioners, may it be prima-facie, the petitioners/plaintiffs' claim cannot be rejected.

At this juncture, it will further be appropriate to mention here that the Board of Revenue passed the interim order ex-parte even when the two courts below already granted injunction in favour of the petitioners. The order of the Board of Revenue dated 20.11.2006 was in fact had very grave consequence which

includes the dispossession of the plaintiffs inspite of injunction order passed by the trial court and upheld by the appellate court and which neither have been set aside or could have been set aside by the Board of Revenue at that time. In these facts and circumstances, when the plaintiffs had two orders in their favour, then the Board of Revenue should have instead of passing the order straightway, which the Board of Revenue could have passed at final stage, has committed illegality to pass the order at interim stage.

In view of the above reasons, this writ petition deserves to be allowed, hence allowed, the order of the Board of Revenue dated 7.5.2007 is set aside and the Board of Revenue is requested to decide the revision petition expeditiously preferably within a period of two months from the date of order.

It is made clear that none of the observations made in the order be construed in favour of the parties on merits.

(PRAKASH TATIA), J.

S.Phophaliya